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April 3, 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

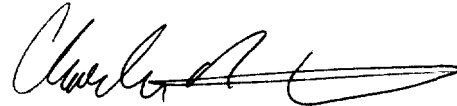
Re: MM Docket No. 97-122; File Nos. BRFT-970129YC, BRFT-970129YD

Dear Ms. Salas:

Transmitted herewith, on behalf of Gerard A. Turro, are an original and six copies of his Reply of Gerard A. Turro to Proposed Findings of Fact and Conclusions in the above-referenced proceeding.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,



Charles R. Naftalin

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re)
)
GERARD A. TURRO)
)
For Renewal of License)
For FM Translator Stations)
W276AQ(FM), Fort Lee, NJ, and)
W232AL(FM), Pomona, NY)
)
MONTICELLO MOUNTAINTOP)
BROADCASTING, INC.)
)
Order to Show Cause Why the)
Construction Permit for FM Radio)
Station WJUX(FM), Monticello, NY,)
Should Not Be Revoked)

MM Docket No. 97-122

File Nos. BRFT-970129YC

BRFT-970129YD

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Honorable Arthur I. Steinberg
Administrative Law Judge

**REPLY OF GERARD A. TURRO TO
PROPOSED FINDINGS OF FACT AND CONCLUSIONS**

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SUMMARY

Mr. Turro's Reply demonstrates that the Proposed Findings of the Bureau and Universal should be rejected in their entirety. Significant matters at issue in this proceeding have been left completely, or substantially, unaddressed by the Bureau and Universal, including:

- Jukebox Radio programming (PF 53-56)
- Connections between the Dumont studio and the Monticello station (PF 57-59)
- Functioning of the TC-8 remote control units (PF 60-77)
- The facilities of the Fort Lee translator (PF 85-94)
- The facilities of the Pomona translator (PF 95-96)
- The transmission characteristics of the Monticello station (PF 104-107)
- The Fort Lee translator equipment for reception of the Monticello station (PF 108-109)
- Actual experience of reception of the Monticello station at the Fort Lee translator (PF 110-111)
- The observations and testing of Mr. Hurst and Mr. Hidle (PF 140-164)
- The programming delay observed by Mr. Owen and Mr. Lynch (PF 165-167)
- Testimony about Jukebox Radio program interruptions (PF 168-171)
- Mr. Hurst's testing of signal generator reception in the Mediterranean Towers (PF 266)

The Bureau and Universal essentially have chosen to attack Mr. Turro only in connection with two matters, the operations of intercity relay station WMG-499, and the 1991 declaratory ruling issued to Mr. Turro by the Chief of the Mass Media Bureau, and Mr. Turro's candor in connection with both of those subjects. As we demonstrate in this Reply, the findings proposed by the Bureau and Universal rest squarely upon profound misunderstands of the record and that the record as a whole clearly supports Mr. Turro's position.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re)	
)	
GERARD A. TURRO)	MM Docket No. 97-122
)	
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To: Honorable Arthur I. Steinberg
Administrative Law Judge

**REPLY OF GERARD A. TURRO TO
PROPOSED FINDINGS OF FACT AND CONCLUSIONS**

Gerard A. Turro, submits herewith, by his attorneys, his Reply to Proposed Findings of Fact and Conclusions submitted by the Bureau and Universal in the above-captioned proceeding.¹ These proceedings were held pursuant to Hearing Designation Order, Order to

¹Throughout our proposed findings and conclusions and this Reply, and consistent with the terminology used previously in this case, we will use the following abbreviations: Mass Media Bureau ("Bureau"), Universal Broadcasting of New York, Inc., the licensee of WVNJ(AM), Oakland, New Jersey ("Universal"), Monticello Mountaintop Broadcasting, Inc. ("MMBI"), the licensee of WJUX(FM), Monticello, New York (formerly holding the call sign of WXTM) (the "Monticello station"), FM Translator Station W276AQ, Fort Lee, New Jersey, licensed to Gerard A. Turro (the "Fort Lee translator"), Intercity Microwave Relay Station WMG-499, formerly licensed to Gerard A. Turro in association with the Fort Lee translator, now defunct ("WMG-499"), the studios of Jukebox Radio located at 75 2nd Street, Dumont, Bergen County, New Jersey (the "Dumont studio") and FM Translator Station W232AL, Pomona, New

Show Cause and Notice of Opportunity for Hearing, FCC 97-137, 12 FCC Rcd 6264 (released April 18, 1997) ("HDO").

I INTRODUCTION

This Reply is directed to the portions of the Bureau and Universal Proposed Findings and Conclusions which are directed against Mr. Turro. We generally have not addressed the issues designated against MMBI.

As we show below, the Bureau has cited erroneously, misunderstood or mischaracterized the record in dozens of places in its Proposed Findings. While a number of these errors appear to be modest or trivial, many of them are substantial. We have addressed the most substantive and significant of the Bureau's mischaracterizations of the record in the body of this Reply. In addition, Attachment A hereto is an attempt to provide a more complete serial set of corrections of the Bureau's erroneous uses of the record in support of the Presiding Judge's effort to achieve as accurate a set of findings as possible. The scope of Attachment A is, generally speaking, limited to matters that are directly relevant to Mr. Turro, but even so, silence on other erroneous uses of the record should not be considered consent.

The Bureau and Universal also bring into their Proposed Findings matters outside of the designated issues. In some cases, we address these matters to the extent that they are directed against Mr. Turro.

York, licensed to Gerard A. Turro (the "Pomona translator"). In addition, the following abbreviations are used for reference: Cohen, Dippell and Everist, P.C. ("CDE"), Bureau and Universal joint exhibits ("MMB_"), MMBI exhibits ("MMBI_"), Mr. Turro's exhibits ("T_"), transcript ("TR"), proposed findings ("PF") and conclusions ("C"). This Reply is filed today based upon extensions of time sought by the Bureau and granted in Order, FCC 98M-28 (released March 11, 1998).

To a great extent, the Bureau and Universal have remained silent concerning a number of significant subjects of this case which we addressed in our Proposed Findings. Accordingly, Mr. Turro's Proposed Findings on these matters should be adopted, including those directed toward:

- Jukebox Radio programming (PF 53-56)
- Connections between the Dumont studio and the Monticello station (PF 57-59)
- Functioning of the TC-8 remote control units (PF 60-77)
- The facilities of the Fort Lee translator (PF 85-94)
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- The programming delay observed by Mr. Owen and Mr. Lynch (PF 165-167)
- Testimony about Jukebox Radio program interruptions (PF 168-171)
- Mr. Hurst's testing of signal generator reception in the Mediterranean Towers (PF 266)

The Bureau and Universal have tried to attack a limited number of the subjects of the hearing, specifically the operations of WMG-499 (the intercity relay ("ICR") station) previously operated in association with the Fort Lee translator, the declaratory ruling sought and obtained by Mr. Turro in 1991 which provided prior approval to the arrangement between Mr. Turro and MMBI, and the candor of Mr. Turro in connection with those subjects. The Bureau and Universal effectively have conceded any claims in connection with the other allegations against Mr. Turro at issue in the HDO.

II THE RECORD CONCERNING WMG-499

A The purposes of ICR station WMG-499 are essentially undisputed

The Bureau's Proposed Findings rely on a number of mischaracterizations of the record

in connection with the uses of WMG-499 Mr. Turro proposed to the Commission and which the Commission granted to him. For example, in its Proposed Finding 9, the Bureau contends that: "WNJW aired Turro's Jukebox Radio programming, which was delivered to the Fort Lee translator via Turro's Inter-city Relay ("ICR") station WMG-499. MMB Ex. 9²"

MMB9 includes copies of Mr. Turro's June 1993 application for a new aural microwave intercity relay station and the Commission's subsequent grant of a license for that station under the call sign WMG-499. At no place in that application, or the Commission's license for it, is there any representation that the ICR station was to be used for delivery of Jukebox Radio programming. On the contrary, the express, and only, statement of the purpose of the station authorized under call sign WMG-499 was provided by Mr. Turro's consulting engineers who prepared the application:

This office has been authorized by Gerard A. Turro, licensee of FM Translator Station W276AQ, Fort Lee, New Jersey, to prepare this statement, FCC Form 313, and the

² In Memorandum Opinion and Order, FCC 97M-121 (released July 11, 1997), the Presiding Judge denied a motion to compel filed by the Bureau and supported by Universal, holding expressly that: "Inquiry into the Franklin Lakes, New Jersey, station is beyond the scope of issues in this proceeding." (*Id.* at para. 5) WNJW refers to that station. During the hearing, counsel to Mr. Turro lodged continuing objections to cross-examination on the subject of the Franklin Lakes station, to which counsel to the Bureau and Universal represented that their questions were for background purposes only. Undeterred by the Judge's decision, however, the Bureau and Universal now both urge a number of proposed findings concerning the Franklin Lakes station. Although we have offered brief responses to those proposed findings in our Reply and Attachment A hereto in the interest of a complete record, we object to these inappropriate tactics of the Bureau and Universal. We urge the Judge to uphold his earlier Order and dismiss all proposed findings based upon the non-record of the Franklin Lakes station. We also ask the Judge to rule that the Bureau and Universal have abused the Commission's processes in seeking findings on matters earlier found to be irrelevant to the proceeding and in failing to abide by their representations on the record that they were not seeking evidence directly concerning the Franklin Lakes station. Such deliberate disrespect for the Presiding Judge's decision places unnecessary and unreasonable burdens on judicial process and on Mr. Turro.

associated exhibit in support of an Application for a New Aural Microwave Intercity Rely (ICR) station to be associated with FM translator station W276AQ. Station W276AQ rebroadcasts the signal of noncommercial station WJUX(FM), Franklin Lakes, New Jersey. The ICR will be used to feed 30-second spot announcement originations concerning financial support and operational communications from the WJUX(FM) studio to the W276AQ transmitter. (MMB9, p. 151)³

The Bureau mischaracterizes MMB9. The Bureau has cited no evidence in the record that the programming of the Franklin Lakes station was "Turro's Jukebox Radio programming" and MMB9 most definitely does **NOT** say that WMG-499 was used to "deliver programming" to the Fort Lee translator. Mr. Turro requested authority to operate an ICR to deliver 30 second per hour announcements and operational communications. (See also Universal Proposed Finding 7) The Commission granted a license to WMG-499 on that basis. WMG-499 indisputably was not applied for to carry regular "Jukebox Radio programming."

The Bureau itself contradicts its Proposed Finding 9 in its Proposed Finding 24 by quoting Mr. Turro's description of the use of the ICR from MMB9, p. 151. As the Commission's Rule makes clear, operational communications are synonymous with telemetry or remote control:

Operational communications include cues, orders, and other communications directly related to the operation of the broadcast station as well as special signals used for telemetry or control of apparatus used in conjunction with broadcast operations. (74.531(f))

In its Proposed Finding 25, the Bureau contends:

On November 30, 1994, after WNJW ceased broadcast operations, Turro notified the Commission that the Fort Lee translator had changed its associated primary station from

³The application identifies the undisputed locations of the Dumont studio and the Mediterranean Towers as the transmit and the receive points, respectively (MMB9, pp. 148), and the license identifies the Dumont studio as the transmitter location. (MMB9, p.155)

WNJW to WJUX. That letter did not identify or discuss the use of the ICR in connection with the Fort Lee translator's rebroadcasting of WJUX. MMB Ex. 2, p. 46.

Similarly, in its Proposed Find 29, the Bureau contends that:

Turro did not identify or otherwise mention the use of the ICR in connection with WJUX to the Microwave Branch of the WTB until June 13, 1995, in response to an order to show cause why the ICR should not be revoked. MMB Ex. 8, 122-124. Turro was so ordered after it became known that he was, among other things, using the ICR in a manner inconsistent with the original grant. *Id.* at 120-121.

Bureau Proposed Findings 25 and 29 assume facts not in evidence, namely, (1) that the use of WMG-499 changed in any material way as a consequence of the Fort Lee translator changing its primary station for rebroadcast to the Monticello station, (2) that the Bureau seems to assume (without citation) some obligation on the part of Mr. Turro to provide notification to the Commission of such changes, even if they occurred, and (3) that the operation of WMG-499 had become inconsistent with the original grant of authority for it. The Bureau is mistaken in all respects.

As detailed above, the record is clear that Mr. Turro represented in the application for the station which was to become WMG-499 that it would be used for insertion of 30 second per hour promotional announcements and operational communications, and the Commission issued him a license on that basis. While the Bureau agrees that Mr. Turro notified the Commission when the Fort Lee translator changed its primary station to the Monticello station (Bureau Proposed Finding 25), the Bureau offers no authority for the proposition that some additional notification was required to discuss the use of a broadcast auxiliary station licensed in association with the Fort Lee translator. We submit that there is no such requirement.

In any event, the use of WMG-499 had not changed materially. The license for WMG-

499 was issued as a consequence of Mr. Turro's request for such a facility to provide 30 second per hour announcements and operational communications to the Fort Lee translator. Use of the facility for operational communications is authorized expressly under Section 74.531(f) of the Commission's Rules, and such use did not change materially as a consequence of the rebroadcast of the Monticello station. Section 74.1231(g) of the Commission's Rules provides authority for originations of 30 second per hour announcements and for emergency warnings. While the record tends to indicate that retransmission of the Monticello station reduced or eliminated the origination of 30 second per hour messages, WMG-499 was still potentially necessary for origination of emergency messages, and may have been so used up to five times. In addition, Mr. Turro retained the right under the Commission's Rules to originate 30 second per hour announcements on the Fort Lee translator, even if he chose not to do so. The Rules do not require a minimum frequency of such use to retain an ICR authorization (*i.e.* there is no express "use it or lose it" requirement).

Given that the exact same subpart of the Commission's Rules (Section 74.1231(g)) authorizes origination of both the 30 second per hour announcements and emergency messages, there was no material change in Mr. Turro's use of WMG-499 after the Fort Lee translator started retransmitting the Monticello station, as compared to before that time, and no material change in the proposed uses of the ICR station applied for by Mr. Turro and licensed by the Commission.

The June 6, 1995 letter from the Commission (MMB8, pp. 120-121) to Mr. Turro was the first time that the Commission expressed any concern about WMG-499, and typical of the Commission's dealings in this case, Mr. Turro was directed to shut down the facility. Mr.

Turro's consulting engineers promptly explained the uses of WMG-499 (MMB8, pp. 122-124) and clearly explained that such uses were authorized, although Mr. Turro promptly discontinued operation of WMG-499 permanently. (T1, pp. 11-12)

The Commission's true concern was probably expressed in its June 6, 1995 letter, when it stated "...this relay station may have been granted in error." (MMB8, p. 120; see also Universal Conclusion 56) The record is clear that Mr. Turro accurately described in the application for WMG-499 his intended use of the station, and the Commission granted him a license for that use, which never changed materially. If the Commission, for whatever reason, changed its mind, it was due to no action or inaction on the part of Mr. Turro. He was candid and forthcoming in his application, properly adhered to reporting requirements and to the authority granted at all times, and promptly discontinued operation of WMG-499 upon being directed to do so. Twist and turn the record as it might, the Bureau has identified no improper act or omission by Mr. Turro in connection with WMG-499.

B The May 15, 1995 testing and testimony related to failsafe programming

The most significant challenge to Mr. Turro's use of WMG-499, and to his candor, rests upon the Bureau and Universal's profound misunderstanding of the record. Their misunderstanding goes to Mr. Turro's testimony relating to the failsafe programming he established at the Fort Lee translator and WMG-499, and the effects of that programming on Mr. Loginow's May 15, 1995 signal generator testing.

As set out in Mr. Turro's Proposed Findings, the unchallenged testimony as to his use of ICR station WMG-499 was as follows.

Between October 1994 and early July, 1995, when WMG-499 was deactivated

pursuant to an FCC letter, Mr. Turro used it for two purposes, as a remote control connection and for its ability to place emergency messages on the Fort Lee translator. He kept WMG-499 live all the time so that it could provide constant telemetry between the Dumont studio and the Fort Lee translator, and because it was the kind of unit that could be damaged by being turned on and off repeatedly. He maintained two channels on this microwave path, a narrow data channel for telemetry or "operational communications," *i.e.* remote control of the Fort Lee translator, and a second path for audio in the event that an emergency required its use. He placed the Jukebox Radio programming on the audio path so that WMG-499 could be monitored and identified easily by third parties wishing to know the source of the signal because the New York City area has severe frequency congestion. He testified that for the entire time that the Monticello station has broadcast Jukebox Radio programming, he had never caused that audio path to provide programming to the Fort Lee translator transmitters, unless there was an emergency. Those transmitters were set to rebroadcast the signal of the Pomona translator or the Monticello station. (T1, p. 12) Mr. Turro's consulting engineers confirmed to the Commission by letter dated June 13, 1995, that WMG-499 was in continuous operation: because switching the equipment on and off would lead to equipment failure eventually, to make available insertion of 30 second per hour announcements and emergency messages authorized by Section 74.1231(g) of the Commission's Rules, for provision of telemetry, and to make its transmissions on 951 MHz "readily identifiable." (MMB8, pp. 122-124) (Turro PF 240)

Mr. Turro's Proposed Findings concerning the failsafe procedures state:

Mr. Turro testified that he configured the remote control system between the Dumont studio and the Fort Lee translator with two failsafe mechanisms. In the event that the telemetry channel on WMG-499 was interrupted, the TC-8 at the Fort Lee translator was programmed to home onto the audio path on WMG-499 and rebroadcast that audio. (T1, pp. 12-13) (Turro PF 245) (emphasis added)

Mr. Turro testified that the reason for that failsafe was to allow him an alternate means of being able to originate emergency messages on the Fort Lee translator, so that in the event that an emergency required such a use and the ordinary controls on the TC-8 unit in the Dumont studio were not functioning properly, he could interrupt the telemetry and immediately use WMG-499 to provide live emergency programming. (T1, p. 12) (Turro PF 246)

Mr. Turro testified that the other failsafe was that in the event that the Fort Lee translator lost the entire signal of WMG-499, then it was programmed to home onto the signal of either the Pomona translator or the Monticello station and immediately retransmit the signal of one of those stations. (T1, p. 13) (Turro PF 247)

The distinction here, which the Bureau and Universal completely misunderstood, is that

interruption of the data being received invoked one failsafe, while complete cessation of all transmissions on the 951 MHz frequency received (*i.e.* complete loss of 951 MHz carrier) at the Fort Lee translator invoked the other failsafe. This readily apparent and important distinction will be explained below.

The unchallenged testimony about Mr. Loginow's May 15, 1995 signal generator testing at the Fort Lee translator is stated in Mr. Turro's Proposed Findings, as follows.

Mr. Loginow testified that on May 15, 1995, he went to the Mediterranean Towers and from the top floor of the building performed tests with a signal generator which led him to conclude that the Fort Lee translator was receiving its programming from WMG-499, on its frequency of 951 MHz, and not on the frequency of the Pomona translator, 94.3 MHz, or the frequency of the Monticello station, 99.7 MHz. (MMB4, p. 84; MMB18, pp. 333-334) (Turro PF 251)

Mr. Loginow testified that he used a portable signal generator to transmit a "low level signal" (MMB4, p. 84) on each of the frequencies of the Monticello station, the Pomona translator and WMG-499, intending to "override another weaker or more distant signal on the same frequency" and detected no reaction to the signal generator except when it transmitted on 951 MHz. (MMB18, pp. 333-334) (Turro PF 252) (emphasis added)

Mr. Loginow listened to the transmissions of the Fort Lee translator, on 103.1 MHz, while performing the signal generator tests to determine if there was a reaction to the testing, which would have been silence interrupting the programming. (TR 356-357) (Turro PF 253) (emphasis added)

Mr. Loginow testified that the signal generator transmitted through a three foot whip antenna which he attached to it and that its maximum power output was less than half a watt. (TR 352) (Turro PF 254)

Mr. Loginow performed the signal generator tests on May 15, 1995, from inside the stair enclosure at the roof level of the Mediterranean Towers, at least 25 stories above the ground. (TR 353-354) The enclosure was surrounded by cinder block walls with a metal staircase below it. (TR 359) (Turro PF 255)

Mr. Loginow thought about conducting the signal generator testing on May 15, 1995 out on the roof but found the door leading out to the roof locked. (TR 354) (Turro PF 256)

Mr. Loginow testified that the surroundings would have attenuated the signal generator's signal "somewhat toward the receiving end." (TR 359) He stated that ideally the testing would have been performed out on the roof. (TR 360) (Turro PF 257)

Mr. Loginow testified that distance between the signal generator and the antenna he wanted to affect could be important to the testing process, depending upon the sensitivity of the receiver. (Ibid.) (Turro PF 258)

Mr. Loginow testified that the closer he could get the signal generator to the antenna to be tested, the more accurate the testing would be and that he had gone to the roof to be near roof mounted antennas. (Ibid.) Mr. Loginow testified that at some point, distance would make the signal generator unable to affect a receiver. (TR 360-361) (Turro PF 259)

In addition, Mr. Loginow testified that obstructions between the signal generator and the system to be tested could affect the validity of the test. (TR 361) He agreed that the signal generator would not work as well from inside of a safe as it would out in the open. (Ibid.) (Turro PF 260)

Mr. Loginow stated that "nearly all translator installations have the receive antennas and the transmitting antennas located on the roof" (TR 361) and he assumed that all receive antennas for the Fort Lee translator would be located on the roof because a roof is the only "technically logical place" for antennas "in 100 percent of the situations." (TR 364-365) (Turro PF 261)

Mr. Loginow was unable to observe antennas on the roof because he was in a locked room and he did not have a map of the antenna locations. (TR 366) (Turro PF 262)

Mr. Loginow testified that May 15, 1995 was the first time that he visited the Fort Lee translator building and tested there, but he did not view or inspect any of the translator's facilities at that time. (TR 363) (Turro PF 263)

From these uncontested facts, the Bureau and Universal contend that Mr. Loginow established on May 15, 1995 that Mr. Turro was providing Jukebox Radio programming to the Fort Lee translator via WMG-499, in overt violation of the Commission's Rules, and that he lacked candor or misrepresented the facts of the matter subsequently. Indeed, Universal is bold enough to allege that Mr. Turro committed perjury in connection with these matters. (Universal

Conclusions 70-74)

The central, representative contention here is expressed in Bureau Proposed Finding 36:

However, when the entire ICR-delivered microwave path (and, consequently, all the signals on the path) was blocked, the Fort Lee translator station did not rebroadcast the over-the-air signal of the Pomona translator (or even the Monticello station), but instead fell silent. Turro Ex. 1, p. 23; Tr. 1696-97. (emphasis added)

The Bureau and Universal stridently claim that Mr. Loginow's signal generator "blocked" the WMG-499 transmission path, and therefore Mr. Turro misrepresented the facts (or committed perjury) because the primary failsafe did not cause the Fort Lee translator to home onto and retransmit the off the air signal of either of the Monticello station or the Pomona translator. It is here that the Bureau and Universal have sadly confused the essential distinction between an interrupted, disrupted or "jammed" signal and the complete loss of a 951 MHz carrier to the Fort Lee translator receive location.

As shown in the unchallenged testimony of Mr. Loginow noted above, Mr. Loginow intended to use his signal generator to "override" the WMG-499 signals on 951 MHz. He substituted the signal from his portable generator for the 951 MHz carrier of WMG-499 (which was carrying Jukebox Radio data and audio channels) coming from the Dumont studio, *i.e.* the signal generator's transmissions "overrode" the 951 MHz carrier from the Dumont studio. In his words, Mr. Loginow transmitted silence on the 951 MHz frequency being received at the Fort Lee translator. Mr. Loginow's signal overrode, and substituted for, the 951 MHz carrier from the Dumont studio which carried the telemetry. Because Mr. Loginow caused the Fort Lee translator to receive his 951 MHz signal, which lacked telemetry, the translator's failsafe programming forced it to switch over to retransmission of that 951 MHz signal, and therefore, rebroadcast

“silence.” Mr. Loginow caused the Fort Lee translator to receive his own 951 MHz generated signal, which was silent “dead carrier” because it had no telemetry, programming, voice or other intelligence. It was a blanket 951 MHz signal.⁴

The evidence is clear and unrefuted. At all times on May 15, 1995, the Fort Lee translator received transmissions on 951 MHz, from the Dumont studio (as licensed), or from Mr. Loginow’s generated signal, or a combination of the two. Transmissions on 951 MHz never ceased.

What Mr. Loginow did not do on May 15, 1995 is crucial. Mr. Loginow did not go to the Dumont studio and turn off the WMG-499 transmitter; he did not disconnect the WMG-499 receive antenna; he did not break into the Fort Lee translator equipment room and disable the WMG-499 receiver. Actions such as these would have caused complete loss of the entire WMG-499 signal at the Fort Lee translator, but such actions did not happen.

Therefore, what Mr. Turro explained had occurred on May 15, 1995 was accurate, uncontested, and consistent with what Mr. Loginow described as his testing procedure. Mr. Loginow interrupted the telemetry (and incidently the audio) transmitted by WMG-499, which caused the secondary failsafe to go into effect, forcing the Fort Lee translator to switch to retransmission of 951 MHz. The first few seconds of “audio” on the 951 MHz channel were silence or “dead carrier” because that was what Mr. Loginow was transmitting on 951 MHz with

⁴In its Proposed Finding 11, Universal suggests that Mr. Turro testified that interruption or loss of the WMG-499 signal would activate the primary failsafe causing rebroadcast of either the Monticello station or the Pomona translator. The record abundantly contradicts this view. Interruption of the signal with another signal is what Mr. Loginow did on May 15, 1995 but some signal on 951 MHz was always received at the Fort Lee translator. See also Universal Proposed Findings 12-16 for further confusion of “interruption” with “loss” of signal.

his signal generator. After Mr. Loginow turned off his signal generator, the failsafe program which Mr. Loginow had activated forced the Fort Lee translator to continue to retransmit 951 MHz, which then was Jukebox Radio audio because the interrupting signal generator was no longer overriding the WMG-499 transmission. The Fort Lee translator retransmitted the audio from WMG-499 until Mr. Turro corrected the situation a few moments later. (T1, p. 24; Turro PF 277)

The testimony is clear. On May 15, 1995, Mr. Loginow caused the reaction he heard.

We have reviewed Mr. Turro's extensive hearing testimony on this matter because the Bureau and Universal have made such a point of it. The following portions of the hearing transcript include the relevant pages referred to by the Bureau, including its Proposed Finding 27: "If for any reason, telemetry along the microwave path was lost, the ICR-delivered microwave audio path from Dumont containing Jukebox Radio programming would shift automatically from the dummy load to the Fort Lee translator for direct broadcast by the Fort Lee translator. Turro Ex. 1, p. 23, Tr. 1626, 1631, 1634-35, 1637-38, 1652, 1681-82." This testimony is offered to refute the misconceptions offered by the Bureau and Universal.

In reality, Mr. Turro testified as follows.

THE WITNESS: Are you talking about losing 951 completely, or are you just basically have dead carrier on data, and dead carrier on audio? Is that what --

JUDGE STEINBERG: Which -- which causes -- which situation would cause the TC-8 to go to Pomona and Monticello?

THE WITNESS: Loss of 951 completely.

JUDGE STEINBERG: Okay. Then let's take that assumption. You lose 951 completely.

THE WITNESS: Yes.

JUDGE STEINBERG: So you have no data.

THE WITNESS: Correct. You have nothing.

JUDGE STEINBERG: You have nothing on 951.

At that point it goes to Pomona or Monticello, and if you have -- the TC-8 at Fort Lee would rebroadcast Pomona or Monticello?

THE WITNESS: Yes.

JUDGE STEINBERG: How does it do that if you've lost your data path?

THE WITNESS: Oh, okay. Now I understand. Thank you. What happens is -- okay, great, I finally understand the question.

You've got -- no, no, you have two relays up there. You've got one relay --

MR. ARONOWITZ: I --

JUDGE STEINBERG: Let -- don't say anything.

THE WITNESS: Okay, let -- you've got two relays. This is the only way I can explain it. I'm sorry. You've got two relays up there. You got a secondary relay, relay number two. Relay number two is looking at the data coming in, okay?

No data coming in, makes a closure, push the microwave on the air. Okay, is that clear? It's important before I go to the next --

JUDGE STEINBERG: that's step one?

THE WITNESS: Yes, step one.

That's really number two, it's a secondary relay. There is relay number one, which overrides everything. Relay number one is saying, "Let me see this 951 signal coming in." If there is no 951 signal coming in, this relay closes. It doesn't matter what's going on here now because this is the primary relay, the number one relay in the system, Your Honor. This is the one that says, "I don't care what's going on. You're going to Pomona or Monticello." (TR 1680-1682)

Q Mr. Turro, let's say there is some kind of disaster has struck the area.

A Yes.

Q And you rush -- and lines are cut and for whatever reason you feel it necessary to get emergency messages over the air from the Fort Lee translator.

A And the remote control unit is not working.

Q Let me -- stick with me for a minute, okay?

Exactly, and you go to your on-air studio to provide vital information of some kind.

A Yes.

Q And you find that the control unit, some spilled coffee on it or whatever, the buttons are stuck and you can't switch over to the microwave because of some stupid reason. All right?

A Correct.

Q What would you do?

A I would take the data off the microwave unit so that the microwave unit would go on the air in Fort Lee.

Q Well, wouldn't you have to use the remote control unit to take the data off the microwave unit?

A You could do that, but if the unit weren't working, the buttons were broken on it, which is teleprompt to this day.

Q Okay.

A If it didn't work properly, you would want to take this data off the microwave, and the way you would do that, there would be a couple of ways, but the easiest way, Your Honor, would be to pull the plug out for the TC-8 remote control unit.

Q So if you just turned off power to the TC-8 control unit as a last resort kind of thing, the way you have this you could then -- it would automatically home onto the audio path in the microwave and you would be on the air for emergency purposes?

A Yes, in Fort Lee. Yes. (TR 1625-1626)

Now, Mr. Loginow made a statement on the stand when he was up here. He said, "This is bad engineering. This is really stupid. You know, someone wouldn't do this type of thing who know what they are thinking about."

Well, I thought about that, and I said, "You know, unless you know the other half of an equation, I would probably say the same thing too."

If you have an alternate means, which this is, Your Honor, for turning this thing on in Fort Lee, you need an alternate means to turn it off. Okay, God forbid, the remote control blows up, goes on fire. Now I'm operating illegally. I'm using the microwave to feed Fort Lee. I've got a problem. How do I turn it off?

Very simply. Turn the whole microwave unit off. When the whole thing disappears, there is a second relay that says, "No microwave? I'm out of here. Go back to Pomona." (TR 1628-1629)

Q Now, what happens -- tell us again, I think you said, but tell us again, if you lose the entire microwave path, audio and data both go away. The microwave gets turned off say. What happens?

A If you lose a 951 megahertz carrier at the transmitter in Fort Lee, if 951 megahertz disappears, there is a relay that closes that says, "I don't care what's going on. You're going to Pomona or Monticello." I'm using Pomona for example here. It says, "You're going back to translation. I don't care what's going on." And that's what it does, it overrides everything. (TR 1631)

Q All right. Let me walk you through this one more time because I think this is hard.

Let's say it's December of 1994, all right? The Fort Lee translator is picking up the transmission of the Monticello station directly off the air.

A Yes.

Q Okay, and the microwave is -- the microwave is sending its data and a dummy audio, okay? Just the way you've described.

Okay, if the data path is interrupted on this, say it's December 15, 1994, okay? The data path gets interrupted for some reason. What happens?

A The translator in Fort Lee would pick up the microwave audio and rebroadcast it. (TR 1632)

Q Now, again, it's say we're in December 15, 1994, some time in the period of time we're discussing. If Fort Lee is receiving Monticello directly off the air and rebroadcasting it, and the microwave is humming right along, and someone trips over the power cord in the Dumont studio and turns off the microwave, what's the effect?

A None.

JUDGE STEINBERG: The second relay would still close though, right?

THE WITNESS: The second relay would be saying, "You better be translating Monticello." Well, you already are.

JUDGE STEINBERG: Right. So something would happen.

THE WITNESS: I'm sorry.

JUDGE STEINBERG: The second relay would be closed or tripped, whatever the word is, the engineer --

THE WITNESS: Energized.

JUDGE STEINBERG: Energized. It can't be just on and off, or closed and open. It's energized.

THE WITNESS: Or raise and lower.

JUDGE STEINBERG: The second relay is energized, but what was heard what was being broadcast over the air on the translator would remain the same?

THE WITNESS: Yes, sir.

JUDGE STEINBERG: So there would be an over-the-air signal from Monticello and not the audio coming from the microwave?

THE WITNESS: Yes, Your Honor. (TR 1633-1634)

JUDGE STEINBERG: Then the TC-8 is configured to fall back upon itself and start broadcasting the microwave audio, the audio that's being carried over the microwave.

THE WITNESS: Basically, Your Honor, what the TC-8 is doing is it's telling the translator not to take the Monticello audio. It's tell it to take the microwave audit.

JUDGE STEINBERG: Not the Monticello or Pomona audio?

THE WITNESS: Well, we're talking December 15th. I'm sorry.

JUDGE STEINBERG: Well, at whatever -- okay, when the Fort Lee

translator is taking the Monticello audio, it would tell it don't take Monticello; take the microwave.

When it's translating the Pomona audio, it would tell it don't take Pomona anymore; take the microwave?

THE WITNESS: Yes, Your Honor.

JUDGE STEINBERG: How would you get the Fort Lee translator back to the Monticello or back to the Pomona audio?

THE WITNESS: Okay. Assuming the remote control isn't working. Let's assume that the remote control isn't working.

JUDGE STEINBERG: Let's say something happens and the translator is now broadcasting the microwave audio.

How do you get it back?

THE WITNESS: And the remote control isn't working?

JUDGE STEINBERG: Well, would this only happen if the remote control was not working?

MR. NAFTALIN: Give an example.

THE WITNESS: Okay. If the remote control were working, Your Honor, you would hit a switch and you would flip it back to Pomona or Monticello, if the remote control were working. I understand where you're going with this.

JUDGE STEINBERG: Yes.

THE WITNESS: Okay. If the remote control weren't working, and you were translating -- I'm sorry -- and you were rebroadcasting the microwave, what you would do, Your Honor, is you would turn the microwave unit off. And when Fort Lee sees no microwave signal at all, zero, it says --

JUDGE STEINBERG: It goes to Pomona?

THE WITNESS: Yes.

BY MR. NAFTALIN:

Q And where is the microwave unit located to be able to turn it off?

A Oh, it's right --

Q Right there in the studio?

A Right there in the studio. (TR 1634-1636)

JUDGE STEINBERG: No, I'm setting it up.

Okay, Monticello broadcast is interrupted. If the Monticello broadcast is interrupted, then Pomona has got nothing to pick up?

THE WITNESS: Yes, Your Honor.

JUDGE STEINBERG: But it's still carrying the dead carrier?

THE WITNESS: Yes, Your Honor.

JUDGE STEINBERG: And Fort Lee receives the dead carrier?

THE WITNESS: Yes, Your Honor.

JUDGE STEINBERG: Would that trigger the remote control -- would

that trigger the TC-8 at Fort Lee to go to the microwave audio?

THE WITNESS: No, Your Honor.

JUDGE STEINBERG: That was the question I had.

Okay, so basically, the only way that that audio, the microwave audio is going to wind up on the air is if the data path between the TC-8s in Dumont and Fort Lee is interrupted?

THE WITNESS: Yes, Your Honor. (TR 1637-1638)

BY MR. ARONOWITZ;

Q Okay, Mr. Turro, you say that the telemetry, in other words, if the data path were to go out, the fail-safe is that the Fort Lee translator will rebroadcast the microwave audio signal it receives from Dumont over the audio path; is that correct?

A Correct.

Q Is that consistent with the rules, to your understanding?

A Yes.

Q That is. Okay.

And I think you testified this morning, or you said this morning that if the whole microwave path goes down, that then the fail-safe would be to -- for the Fort Lee translator to broadcast the Monticello or Pomona over-the-air signal?

A No 951 signal coming in, that is correct.

JUDGE STEINBERG: If there is no signal coming in on the microwave, that's correct.

MR. ARONOWITZ: Okay. (TR 1675-1676)

JUDGE STEINBERG: Okay. So lost of data, we broadcast over the Fort Lee translator the audio?

THE WITNESS: Yes.

JUDGE STEINBERG: From the microwave?

THE WITNESS: Yes.

JUDGE STEINBERG: Loss of carrier from the microwave, the second fail-safe is that the Fort Lee translator will broadcast either the Pomona or the Monticello over-the-air signal?

THE WITNESS: Correct. (TR 1677-1678)

We've lost data. Okay, secondary rely kicks in, puts the microwave on the air. Oops, got a problem. My remote control is dead. It's blown up. It doesn't work anymore. I need to get this back on, Pomona or Monticello, and it doesn't matter which one it is. Turn off

the microwave unit in Dumont. 951 disappears. This relay number one energizes and said, " Go back to Pomona or Monticello." (TR 1683)

Mr. Turro's explanation of the failsafe programming is corroborated by Mr. Hurst and Mr. Loginow himself. As Mr. Turro testified, he knew of the May 15, 1995 "jamming" incident because he observed its effects contemporaneously in the Dumont studio. Mr. Turro confirmed his knowledge at the time to Mr. Hurst and on August 2, 1995 to Mr. Loginow. (See Turro PF 277-280) As Mr. Loginow agreed, Mr. Turro had no way of knowing about the signal generator "jamming" of WMG-499 except by observation of its results. Mr. Turro was able to observe those results because of the operation of the failsafe programming which caused the translator to home in on the 951 MHz transmissions. This substantial corroboration of Mr. Turro's testimony is unrefuted by the Bureau and Universal.

Therefore, the record is overwhelmingly clear that Mr. Turro's explanation of the effects of Mr. Loginow's May 15, 1995 on the translator failsafe programming is the only correct one. It must be accepted as such.

C The May 15, 1995 testing and testimony related to the Pomona translator receive antenna

On May 15, 1995, Mr. Loginow used his signal generator to attempt to override the signals received from each of the Monticello station, the Pomona translator and WMG-499. (Turro PF 251-252) As described in the preceding section, Mr. Loginow concluded that the Fort Lee translator was receiving Jukebox Radio programming from WMG-499 because the only reaction he heard (*i.e.* interruption with the silence he transmitted) occurred when he transmitted on 951 MHz.

Mr. Loginow's signal overrode WMG-499 because he transmitted from the roof

enclosure, near the roof-mounted receive antenna for WMG-499. For the reasons described below, Mr. Loginow's signal did not override the receive antenna for the Pomona translator because, unknown to him, it was 26 stories below him and his ½ watt signal was too weak to pass through the building and affect it. (See Turro PF 264-274)

Mr. Turro testified that during a period of time in 1995, including on May 15, 1995, the Fort Lee translator received the signal of the Pomona translator off the air through a receive antenna in the basement of the Mediterranean Towers, where the Fort Lee translator is located. (Turro PF 264) Mr. Turro and Mr. Hurst both testified that the ½ watt signal generated by Mr. Loginow from inside the locked room at the roof of the building would not have been able to override the Pomona translator receive antenna some 26 stories below in the basement. Most importantly, Mr. Hurst testified that he tested the matter, and found that a 5 watt signal (*i.e.* ten times the strength of Mr. Loginow's signal generator) did not pass through the building from the basement location to the roof and affect an antenna on the Pomona translator frequency. In his expert opinion, Mr. Hurst concluded that Mr. Loginow's signal of only ½ watt from the roof would not be able to affect the basement antenna. (See Turro PF 265-274) Mr. Hurst also found an abandoned antenna at the basement location and showed it in the video associated with his direct statement (T2).

The Bureau and Universal have no actual evidentiary challenge to the existence of the basement antenna and offered no rebuttal in the record to the validity of Mr. Hurst's 5 watt test.

The Bureau contends in its Proposed Finding 37 that:

...Turro testified that, contrary to Loginow's understanding, he had a receive antenna for the Pomona translator located in the basement of the Mediterranean Towers between April 1995, and sometime in 1996.